

ENTERED

June 01, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISIOND TRONICS, *et al.*,

CLAIMANTS,

VS.

UNITED STATES OF AMERICA,

RESPONDENT.

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MISC. ACTION NO. 7:11-MC-55

REPORT AND RECOMMENDATION

Claimants D Tronics and DB Research, LLP, initiated this action by filing a “Motion for Return of Property” pursuant to 18 U.S.C. § 983(f) and Federal Rule of Criminal Procedure 41(g). (Docket Nos. 1, 2.) Pending before the Court is Claimants’ “Notice of Dismissal.” (Docket No. 17.) As discussed below, because Claimants promptly requested voluntary dismissal prior to any appearance by the Respondent, the undersigned recommends that this action be dismissed pursuant to Federal Rule of Civil Procedure 41(a).

Claimants alleged in their “First Amended Petition/Motion for Return of Property” that Respondent violated their constitutional rights by unlawfully seizing their property; specifically, the proceeds from three bank accounts (totaling \$3,092,895). (Docket No. 2, at 2.) Claimants asserted that the “currency at issue constitutes the assets of legitimate businesses.” (*Id.* at 3.) As relief, Claimants sought “an order directing the United States Government to . . . immediately unfreeze, release, and return the above referenced accounts to Claimants.” (*Id.* at 9.)

Claimants later filed the pending “Notice of Dismissal.” (Docket No. 17.) Respondent has not filed an opposition to the dismissal, nor has it taken any other action in this case.

Rule 41(a) provides that “the plaintiff may dismiss an action without a court order by filing[] a notice of dismissal before the opposing party serves either an answer or a motion for

summary judgment.”¹ FED. R. CIV. P. 41(a)(1)(A)(i). Here, Respondent United States has been served with process; however, it has made no appearance in this case. Claimants request for voluntary dismissal is appropriate since Respondent will not be prejudiced by the dismissal. *See LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 604 (5th Cir. 1976); *see also* 9 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2362 (3d ed. 2008) (“The purpose of Federal Rule 41(a) is to permit the plaintiff voluntarily to dismiss the action when no other party will be prejudiced.”). This miscellaneous action seeking the return of property should be dismissed since Claimants have requested a voluntary dismissal and because Respondent will not be prejudiced by the dismissal.

CONCLUSION

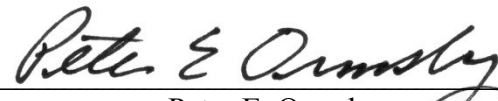
For the foregoing reasons, the undersigned respectfully recommends that Claimants’ “Notice of Dismissal” (Docket No. 17) be **GRANTED** and that this miscellaneous action be **DISMISSED** without prejudice.

NOTICE

The Clerk shall send a copy of this Report and Recommendation to counsel for the parties, who have fourteen (14) days after receipt thereof to file written objections pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure. Failure to file timely written objections shall bar an aggrieved party from receiving a de novo review by the District Court on an issue covered in this Report and, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Court.

¹ Rule 41(a) also provides that “unless the notice or stipulation states otherwise, the dismissal is without prejudice.” FED. R. CIV. P. 41(a)(1)(B).

DONE at McAllen, Texas on May 28, 2016.



Peter E. Ormsby
United States Magistrate Judge